

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

**ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,**

Plaintiff,

**v.**

**TOWN OF GURLEY,  
ALABAMA and M&N  
MATERIALS, INC.,**

Defendant.

Civil Action Number  
**5:14-cv-00613-AKK**

**ORDER**

On July 13, 2015, the magistrate judge entered a report and recommendation, doc. 47, regarding cross-motions for summary judgment filed by plaintiff St. Paul Fire and Marine Insurance Company (“St. Paul”), doc. 33, defendant Town of Gurley (“the Town”), doc. 32, and defendant M&N Materials, Inc. (M&N), doc. 36. The parties were allowed fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. On July 27, 2015, M&N filed objections to the magistrate judge’s report and recommendation. Doc. 49. On August 7, 2015, St. Paul filed a response to M&N’s objections to the

report and recommendation. Doc. 51.

Having reviewed the pleadings, the briefs, the magistrate's report and recommendation, and M&N's objections thereto, the court hereby **ADOPTS** the report of the magistrate judge.

Accordingly, as it relates solely to the duty to defend, St. Paul's motion, doc. 33, is **DENIED**, and the Town and M&N's motions, docs. 32 and 36, are **GRANTED**. With respect to the indemnification issue, because whether there is a duty to indemnify under the policy will depend on a finding of liability in the underlying action, *M&N Materials, Inc. v. Town of Gurley, Alabama, et al.*, Case No. 5:14-cv-00184-CLS, the issue is premature. Therefore, the court agrees with St. Paul that the court should stay the issue of indemnification. In that respect, the motion to clarify, doc. 48, is **GRANTED**, and the case is **STAYED** pending the resolution in *M&N Materials, Inc.*, Case No. 5:14-cv-00184-CLS.

**DONE** this 4th day of September, 2015.

  
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**ABDUL K. KALLON**  
UNITED STATES DISTRICT JUDGE